

September 12, 1980

SAN FELIPE PUEBLO	:	Notice of Docketing and
	:	Order Dismissing Appeal
v.	:	
	:	IBIA 80-50-A
COMMISSIONER OF INDIAN AFFAIRS	:	

### ORDER

By memorandum dated August 27, 1980, Acting Deputy Commissioner of Indian Affairs Theodore C. Krenzke referred to the Board of Indian Appeals for resolution an appeal by the Pueblo de San Felipe (appellant) from an action of the Bureau of Indian Affairs whereby \$189,200 paid by the New Mexico State Highway Department for the grant of a right-of-way across lands allegedly owned by the San Felipe Pueblo was deposited into a general escrow account. The appeal of the San Felipe Pueblo is hereby docketed under the above IBIA number. However, for reasons set forth below, the appeal must be dismissed by the Board for lack of jurisdiction.

From an examination of the administrative record forwarded by the Bureau to the Board, the following facts are evident. The sum of \$189,200 represents that portion of a payment from the New Mexico State Highway Department for the grant of a right-of-way across land referred to by the Bureau as the "El Ranchito overlap area." Ownership of the El Ranchito overlap area is claimed by two Pueblos--the San Felipe Pueblo, appellant herein, and the Santa Ana Pueblo. In the subject appeal, the San Felipe Pueblo contends that it is entitled to the \$189,200 paid by the State "free and clear from any other claim" and that the foregoing funds placed by the Bureau in general escrow pending resolution of the dispute over ownership of the El Ranchito overlap area "should be deposited immediately in the Pueblo de San Felipe's Proceeds of Labor Account."

Because the Bureau's placement of the \$189,200 into escrow occurred as a result of a specific directive from the Commissioner of Indian Affairs, the San Felipe Pueblo requested that its appeal from such action be heard by some other authority. Accordingly, the matter was referred by the Commissioner's office to the Board of Indian

Appeals pursuant to 25 CFR 2.19. However, it is clear from the record that the Commissioner's directive at issue was rendered in compliance with a specific ruling by the Secretary of the Interior that the funds now sought by appellant be placed in escrow. In response to a memorandum to the Secretary from the Acting Solicitor, dated December 18, 1979, discussing problems associated with the "Albuquerque-to-Santa Fe highway," the Secretary addressed the very issue before us by informing the Acting Solicitor by memorandum dated December 21, 1979: "I prefer to escrow the amount that is attributable to the disputed lands. When ownership is determined, the money could be dispersed without delay or hardship."

The regulation which governs the nature of decisions of the Bureau of Indian Affairs appealable to the Board provides in pertinent part:

Any interested party adversely affected by a final administrative action or decision of an official of the Bureau of Indian Affairs issued under regulations in Title 25 of the Code of Federal Regulations in a case involving a determination, finding, or order protested as a violation of a right or privilege of the appellant under regulations in 25 CFR Chapter I, may appeal to the Board of Indian Appeals, except (a) to the extent that decisions of officials under the supervision of the Commissioner of the Bureau of Indian Affairs must first be appealed to the Commissioner under provisions in 25 CFR Part 2; (b) where such decision has been approved by the Secretary prior to promulgation; and (c) where otherwise provided by law or regulation. [Emphasis supplied.]

43 CFR 4.353.

Based on the facts of record in this matter, the Board is precluded by the underscored provision of 43 CFR 4.353, above, from accepting jurisdiction over the subject appeal. 1/

#### ORDER

It is ordered that the appeal of the San Felipe Pueblo from the Commissioner's action placing into general escrow funds paid by the

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1/ Rightful ownership of lands within the El Ranchito conflict area could yet be adjudicated by the Board of Indian Appeals under one of the following circumstances: (a) On appeal from any future determination by the Bureau of Indian Affairs establishing ownership, or (b) upon referral of the question to the Board by the Secretary. See 43 CFR 4.1; 4.351.

New Mexico State Highway Department for the grant of a right-of-way across lands claimed by appellant and the Santa Ana Pueblo be dismissed for lack of jurisdiction. The Board of Indian Appeals lacks jurisdiction because the Secretary of the Interior has already determined the propriety of the escrow procedure at issue.

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Wm. Philip Horton  
Chief Administrative Judge

I concur:

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Franklin Arness  
Administrative Judge